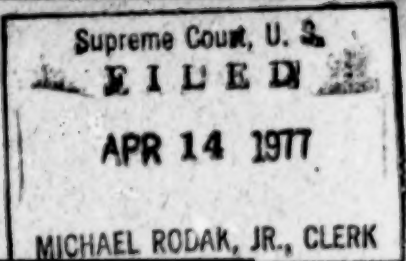


No. 76-1191



In the Supreme Court of the United States

OCTOBER TERM, 1976

UNITED STATES OF AMERICA, PETITIONER

v.

CITY OF ALBUQUERQUE, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE
TENTH CIRCUIT*

REPLY MEMORANDUM FOR THE UNITED STATES

WADE H. McCREE, JR.,
*Solicitor General,
Department of Justice,
Washington, D.C. 20530.*

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In the petition for a writ of certiorari, the United States stated the question presented in this case to be:

Whether an employer's duty, under Title VII of the Civil Rights Act of 1964, as amended, reasonably to accommodate an employee's bona fide religious practice of refraining from work on his Sabbath requires the employer to provide reasonable assistance to the employee in finding a substitute to work on his Sabbath.

In their brief in opposition to the petition, respondents contend that this question cannot properly be reviewed by this Court. Respondents state that neither court below addressed this question, and that "[t]his Court cannot review a question which has not yet been considered

by the District Court or the Court of Appeals" (Br. in Opp. 4; citations omitted).

Throughout this lawsuit, the United States has consistently contended that Title VII imposed upon respondents an obligation to provide reasonable assistance to Mr. Zamora in finding a substitute to work on his Sabbath. For example, the United States charged in the complaint that respondents violated Mr. Zamora's Title VII rights by, *inter alia*, "requiring him to * * * find replacement workers in order * * * to observe his Sabbath * * *" (Complaint 2). In its district court "Brief In Support of Plaintiff's Proposed Findings of Fact and Conclusions of Law," the United States asserted that "the cases are clear that it was Chief Kuhn's responsibility and not Zamora's to obtain the cooperation of other employees in whatever accommodation was to be made" (Br. in Support 22). The United States similarly contended in its brief filed with the court of appeals that "[t]he district court's ruling * * * is inconsistent with * * * those cases indicating that the obligation to provide substitute workers is upon the employer, not the employee" (Br. 25; citations omitted).

Respondents correctly state that neither the opinion of the district court nor that of the court of appeals addressed the question of who is to bear the burden of arranging for substitute workers for Sabbatarians. By ruling against the United States without addressing the government's contention on this point, the courts below have necessarily rejected it, and the question, therefore, is properly presented here.

For the foregoing reasons, and for the reasons stated in the petition for a writ of certiorari, consideration of the petition should be deferred pending this Court's decision in *Hardison v. Trans World Airlines, Inc.*, No. 75-1126.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

APRIL 1977.